

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

708

CA 21-01280

PRESENT: SMITH, J.P., PERADOTTO, NEMOYER, CURRAN, AND BANNISTER, JJ.

JANE DOE, CLAIMANT-RESPONDENT,

V

MEMORANDUM AND ORDER

STATE OF NEW YORK, DEFENDANT-APPELLANT.
(CLAIM NO. 125775.)

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (CHRISTOPHER ANDREW LIBERATI-
CONANT OF COUNSEL), FOR DEFENDANT-APPELLANT.

KENNY & KENNY, PLLC, SYRACUSE (MICHAEL P. KENNY OF COUNSEL), FOR
CLAIMANT-RESPONDENT.

Appeal from an interlocutory judgment of the Court of Claims
(Catherine C. Schaewe, J.), entered February 17, 2021. The
interlocutory judgment, inter alia, granted that part of claimant's
motion seeking partial summary judgment on the issue of liability.

It is hereby ORDERED that the interlocutory judgment so appealed
from is unanimously reversed on the law without costs and that part of
the motion seeking partial summary judgment on the issue of liability
is denied.

Memorandum: Claimant commenced this action to recover damages
resulting from an incident in which claimant, a patient at a
healthcare facility owned and operated by defendant, State of New York
(State), was sexually assaulted by another patient at the facility.
The State appeals from an interlocutory judgment that, inter alia,
granted claimant's motion seeking, among other things, partial summary
judgment on the issue of liability. We reverse.

We reject the State's contention that the Court of Claims applied
the incorrect principles of negligence to the instant claim. As the
court below correctly stated, "[a] hospital has a duty to safeguard
the welfare of its patients, even from harm inflicted by third
persons, measured by the capacity of the patient to provide for his or
her own safety" (*N.X. v Cabrini Med. Ctr.*, 97 NY2d 247, 252 [2002];
see Williams v Bayley Seton Hosp., 112 AD3d 917, 918 [2d Dept 2013];
see generally Mochen v State of New York, 57 AD2d 719, 720 [4th Dept
1977]). A hospital is not, however, "an insurer of patient safety"
and is not required "to keep each patient under constant surveillance"
(*N.X.*, 97 NY2d at 253). Instead, "[a]s with any liability in tort,
the scope of a hospital's duty is circumscribed by those risks which
are reasonably foreseeable" (*id.*).

We agree with the State, however, that the court erred in granting the motion to the extent that it sought partial summary judgment on the issue of liability. Although claimant met her initial burden on the motion by submitting the medical records of her assailant and the affidavit of an expert who opined that those records reflected that the assailant posed a reasonably foreseeable risk, the State raised a triable issue of fact in opposition (*see generally Williams*, 112 AD3d at 918). Specifically, the State submitted the opinion of an expert explaining that, although the assailant had exhibited sexually inappropriate and sometimes aggressive behavior prior to the assault, such behavior was not uncommon for individuals suffering, as did the assailant, from certain mental health conditions. The State's expert opined that because the assailant had not previously exhibited conduct rising to the sort of violent sexual assault perpetrated against claimant, the assailant's medical history did not render it reasonably foreseeable that he would commit such an act and the healthcare facility's precautions were thus appropriate.

Entered: September 30, 2022

Ann Dillon Flynn
Clerk of the Court